SUMMARY
January 20, 2022

2022COA13

No. 21CA0438, *Salazar v. ICAO* — Labor and Industry — Workers' Compensation — Benefits — Quasi-Course of Employment Doctrine

In this workers' compensation case, a division of the court of appeals affirms the order of the Industrial Claim Appeals Office (Panel) upholding the decision of an Administrative Law Judge (ALJ) denying and dismissing a claimant's claim for benefits for injuries he sustained in a motor vehicle accident on his way to a medical appointment. Although the quasi-course of employment doctrine generally extends workers' compensation coverage to injuries sustained while traveling to or from covered medical care for a compensable injury, the subsequent injury is compensable under the doctrine only if the claimant sustained an initial compensable injury. Because the ALJ's finding that claimant did not sustain an

initial compensable work-related injury was supported by the record evidence, the Panel did not err by upholding the ALJ's determination that any injuries claimant sustained as a result of the secondary motor vehicle accident were not compensable.

COLORADO COURT OF APPEALS **2022COA13**

Court of Appeals No. 21CA0438
Industrial Claim Appeals Office of the State of Colorado
WC No. 5-128-144

James Salazar,

Petitioner,

v.

Industrial Claim Appeals Office of the State of Colorado, 3ATS, d/b/a Grand Valley Tree Service, and Pinnacol Assurance,

Respondents.

ORDER AFFIRMED

Division III
Opinion by JUDGE BROWN
Furman and Lipinsky, JJ., concur

Announced January 20, 2022

Withers Seidman Rice Mueller Goodbody P.C., Sean E. P. Goodbody, Grand Junction, Colorado, for Petitioner

No Appearance for Respondent Industrial Claim Appeals Office

Pinnacol Assurance, Harvey D. Flewelling, Denver, Colorado, for Respondents 3ATS and Pinnacol Assurance

The Elliot Law Offices, PC, Alonit Katzman, Arvada, Colorado, for Amicus Curiae Colorado Worker's Compensation Education Association

¶ 1 In this workers' compensation action, claimant, James Salazar, seeks review of a final order of the Industrial Claim Appeals Office (Panel) upholding the denial and dismissal of his claim for benefits. An administrative law judge (ALJ) determined that claimant did not sustain a compensable injury and therefore the injuries he later sustained in a motor vehicle accident on his way to a medical appointment did not fall under the quasi-course of employment doctrine. Because we agree with the ALJ and the Panel that injuries sustained in a subsequent accident are compensable only when there first exists an initial compensable injury, we affirm.

I. Background

¶ 2 Claimant worked for 3ATS, doing business as Grand Valley Tree Service, from June 2019 to January 2020 trimming, cutting, and removing trees. On Monday, January 13, 2020, claimant texted Grand Valley Tree Service's owner, Nathan Ridgley, to advise the latter that he

> woke up this morning with a very sore lower back. My pain level on Friday after work was at a 7, and this morning about an 8 therefore; [I] really need to get in to see a Dr today . . . . Picking up logs on Friday was the cause.

That prior Friday, January 10, 2020, claimant had been working with a crew trimming and removing trees from Mr. Ridgley's father's property.[1]

¶ 3 Upon learning of the potential injury, Mr. Ridgley provided claimant with a list of treaters, as required by section 8-43-404(5)(a)(I)(A), C.R.S. 2021. From that list, claimant selected Dr. Theodore Sofish because Dr. Sofish "was in [claimant's] area."

¶ 4 Claimant's wife drove him to his appointment with Dr. Sofish on January 16, 2020. En route, they were involved in a motor vehicle accident when their "car was T-boned by an elderly woman" on the passenger side. Despite their involvement in the collision, claimant and his wife proceeded to the appointment with Dr. Sofish. Claimant testified that after the motor vehicle accident he experienced headaches, arm tingling, shoulder pain, and neck and low back strain.

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[1] Claimant expressed some confusion about the date of his alleged injury, initially asserting that he sustained injuries on December 13, 2019. However, Mr. Ridgley testified that no "tree work" occurred in December 2019, and claimant subsequently "did not pursue" a claim for benefits with a date of injury of December 13, 2019.

¶ 5 In 2002, many years before he worked for Mr. Ridgley, claimant injured his back in an accident on an oil rig. He testified that while placing a belt at the rear of the rig, he slipped on the wet surface and "literally fell off the side of the rig," landing in "a crunched down position." He received treatment for that back injury from a chiropractor and the "Veterans Administration" (VA). Medical records establish and claimant admits that he received treatment for his continuing back pain in 2016, 2017, 2018, and 2019. Notably, in November 2019 — weeks prior to the injury he allegedly suffered while working for Mr. Ridgley — claimant reported to his VA physician that he was experiencing such severe chronic back pain that he requested a back brace to help with his work. An MRI performed on December 16, 2019, at the request of the VA physician found "moderate right and mild left-sided foraminal stenosis at L4-5," "right disc extrusion," and "a left paracentral disc extrusion at L5-S1 abut[ting] the descending S1 nerve root . . . caus[ing] moderate left-sided foraminal stenosis."

¶ 6 Given claimant's documented history of pre-existing chronic back pain and degenerative disc changes, Grand Valley Tree Service and its insurer, Pinnacol Assurance (collectively, employer), filed a

notice of contest on February 10, 2020, challenging the causation of claimant's injuries. To support its position, employer sent claimant to Dr. Brian Reiss for an independent medical examination. After examining claimant, taking his medical history, and reviewing his extensive prior medical records, Dr. Reiss concluded that claimant did not suffer an injury on January 10, 2020. As Dr. Reiss explained, simply suffering pain while working is not conclusive evidence that an injury occurred. Instead, Dr. Reiss attributed claimant's back pain to his pre-existing back condition. Dr. Reiss conceded, though, that claimant's condition may have worsened as a result of the January 16, 2020, motor vehicle accident, and that claimant may have suffered additional symptomology associated with the accident.

¶ 7 Claimant applied for a hearing, seeking medical and temporary total disability (TTD) benefits. At the hearing, Dr. Reiss reiterated his opinion that claimant had not suffered any injury on January 10, 2020. The ALJ found Dr. Reiss's opinion persuasive and credible, concluding that "claimant did not suffer a compensable injury on January 10, 2020." In contrast, the ALJ

discredited claimant's testimony, finding him to be neither credible nor persuasive.

¶ 8 Having determined that claimant did not sustain a work-related injury, the ALJ also denied and dismissed claimant's request for benefits arising out of the January 16, 2020, motor vehicle accident. Relying on the quasi-course of employment doctrine, claimant maintained that because the accident occurred while he was on his way to his medical appointment with Dr. Sofish, any resulting injuries should be covered, even if the work-related event did not cause a compensable injury. The ALJ disagreed. She concluded that the quasi-course of employment doctrine only applies if there is first a compensable injury. She therefore denied and dismissed claimant's claim for medical and TTD benefits.

¶ 9 On review, the Panel affirmed the ALJ's ruling. The Panel agreed with the ALJ that a compensable injury must first be found before coverage can attach for injuries sustained in a related accident. The Panel noted that prior cases that have addressed quasi-course of employment "universally require the subsequent injury to have been incurred through the pursuit of treatment

required by a 'compensable injury.'" Because substantial evidence supported the ALJ's finding that no injury occurred on January 10, 2020, the Panel could not set the finding aside. And if no injury occurred on January 10, 2020, no coverage existed for the January 16, 2020, accident either.

II. Analysis

¶ 10 Claimant raises two arguments on appeal: (1) the Panel and the ALJ misapplied the law by concluding that injuries attributable to his January 16, 2020, motor vehicle accident were not covered; and (2) the ALJ and the Panel violated his rights to equal protection by denying him coverage for his motor vehicle accident injuries. As discussed below, we are not persuaded by either of these contentions.

A. Quasi-Course of Employment Doctrine

¶ 11 Claimant contends that the quasi-course of employment doctrine mandates that the injuries he sustained in the January 16, 2020, motor vehicle accident be covered. He argues that he only traveled to see Dr. Sofish because of his "contractual duties" with employer to seek treatment for his claimed back injury with a physician of employer's choosing. He points out that, at the time of

the accident, he could not have known that employer would contest compensability and he should not be punished for following workers' compensation protocols requiring him to see a physician selected by employer. Along with amicus, he asserts that a system that leaves employees vulnerable to injuries and expenses arising out of an accident in which they would not have been involved but for their trip to see an employer-sanctioned physician is unfair and contrary to the beneficent purposes and liberal construction of the Workers' Compensation Act (Act). A more just interpretation of the Act, he argues, would compensate him and other similarly injured workers for injuries caused by subsequent travel accidents. We disagree.

1. Governing Law

¶ 12 A claimant has a right to compensation under the Act upon satisfaction of three conditions:

> (a) Where, at the time of the injury, both employer and employee are subject to the provisions of said articles and where the employer has complied with the provisions thereof regarding insurance;
>
> (b) Where, at the time of the injury, the employee is performing service arising out of

> and in the course of the employee's employment;
>
> (c) Where the injury or death is proximately caused by an injury or occupational disease arising out of and in the course of the employee's employment and is not intentionally self-inflicted.

§ 8-41-301(1), C.R.S. 2021. Thus, "[t]o receive workers' compensation benefits, an injured worker must establish, by a preponderance of the evidence, that he has sustained a compensable injury or death 'proximately caused by an injury . . . arising out of and in the course of the employee's employment . . . .'" *SkyWest Airlines, Inc. v. Indus. Claim Appeals Off.*, 2020 COA 131, ¶ 13 (quoting § 8-41-301(1)(c)).

¶ 13 An employer is responsible for the direct and natural consequences that flow from a compensable injury. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258, 1265 (Colo. 1985). But an employee who sustains a work-related injury bears the threshold burden of establishing that the injury is causally connected to the employee's work. "Proof of causation is a threshold requirement which an injured employee must establish by a preponderance of the

evidence before any compensation is awarded." *Faulkner v. Indus. Claim Appeals Off.*, 12 P.3d 844, 846 (Colo. App. 2000).

¶ 14 The quasi-course of employment doctrine

> applies to activities undertaken by the employee which follow a compensable injury. And, although they take place outside the time and space limits of normal employment and would not be considered employment activities for usual purposes, they are nevertheless related to the employment in the sense that they are necessary or reasonable activities that would not have been undertaken *but for the compensable injury*.

Excel Corp. v. Indus. Claim Appeals Off., 860 P.2d 1393, 1394 (Colo. App. 1993) (emphasis added). "Under the doctrine, the second injury is not considered an intervening event that would otherwise relieve the employer from further liability." *Price Mine Serv., Inc. v. Indus. Claim Appeals Off.*, 64 P.3d 936, 938 (Colo. App. 2003). Instead, the second injury becomes "a compensable consequence stemming from the underlying industrial injury." *Id.*

2. Standard of Review

¶ 15 The Act limits our review of Panel decisions. We may only set aside a decision of the Panel on the following grounds:

> That the findings of fact are not sufficient to permit appellate review; that conflicts in the

> evidence are not resolved in the record; that the findings of fact are not supported by the evidence; that the findings of fact do not support the order; or that the award or denial of benefits is not supported by applicable law. If the findings of fact entered by the director or administrative law judge are supported by substantial evidence, they shall not be altered by the court of appeals.

§ 8-43-308, C.R.S. 2021.

¶ 16 Claimant challenges the ALJ's and the Panel's application of the quasi-course of employment doctrine. "[W]e review de novo questions of law and of the application of law to undisputed facts." *Winter v. Indus. Claim Appeals Off.*, 2013 COA 126, ¶ 7.

¶ 17 However, whether claimant sustained a compensable injury is a question of fact to be determined by the ALJ. *Eller v. Indus. Claim Appeals Off.*, 224 P.3d 397, 399-400 (Colo. App. 2009). Likewise, whether claimant met his threshold burden of establishing causation is a question of fact. *Faulkner*, 12 P.3d at 846. Under the limitations placed on our review by section 8-43-308, "we are bound by the ALJ's factual determinations if they are supported by substantial evidence in the record." *Paint Connection Plus v. Indus. Claim Appeals Off.*, 240 P.3d 429, 435 (Colo. App. 2010); *see also Joslins Dry Goods Co. v. Indus. Claim Appeals Off.*, 21 P.3d 866, 869

(Colo. App. 2001) ("Since causation is an issue of fact for the ALJ, we must uphold the ALJ's order if it is supported by substantial evidence.") (citation omitted). "Substantial evidence is that which is probative, credible, and competent, such that it warrants a reasonable belief in the existence of a particular fact without regard to contradictory testimony or inference." *Nanez v. Indus. Claim Appeals Off.*, 2018 COA 162, ¶ 34 (quoting *City of Loveland Police Dep't v. Indus. Claim Appeals Off.*, 141 P.3d 943, 950 (Colo. App. 2006)).

3. Claimant's Car Accident Does Not Fall Under the Quasi-Course of Employment Doctrine

¶ 18 The ALJ found that claimant did not suffer an injury on January 10, 2020. In fact, the ALJ determined that claimant did not suffer any work-related injury in the course of his employment with Grand Valley Tree Service. Dr. Reiss's opinions and testimony amply support the ALJ's factual finding, and we are therefore bound by it. *See Joslins Dry Goods*, 21 P.3d at 869; *Rockwell Int'l v. Turnbull*, 802 P.2d 1182, 1183 (Colo. App. 1990) ("[I]f . . . expert testimony is presented, the weight to be accorded to the testimony

is a matter exclusively within the discretion of the [ALJ] as fact-finder.").

¶ 19 Claimant does not challenge this finding. Instead, he argues that, even though his underlying injury was not compensable, the quasi-course of employment doctrine mandates that he nevertheless be compensated for the injuries he sustained in the accident while driving to his appointment with Dr. Sofish. He argues that his secondary injuries should be covered because he would not have been traveling to Dr. Sofish's office but for his contractual relationship with his employer, which allowed his employer to designate his medical provider.

¶ 20 As relevant here, the quasi-course of employment doctrine generally extends workers' compensation coverage to injuries sustained while traveling to or from covered medical care for a compensable injury. *See Kelly v. Indus. Claim Appeals Off.*, 214 P.3d 516, 518 (Colo. App. 2009) ("It is well settled in Colorado that the quasi-course of employment doctrine extends workers' compensation benefits to injuries sustained while traveling to and from treatment by an authorized provider."). But while Colorado courts have long recognized the quasi-course of employment

doctrine in this context, they have not been entirely uniform in explaining the rationale for it. Some courts have viewed the secondary injury as compensable because of its causal relationship to the original injury. *See Price Mine Serv., Inc.*, 64 P.3d at 938-39 (viewing a quasi-course of employment injury as "within the range of compensable consequences of the original industrial injury"). Others view the secondary injury as compensable "because the law requires an employer to furnish such services to the employee, and as a result, the journey to and from the physician's office is considered to be a part of the employment." *Emps. Fire Ins. Co. v. Lumbermens Mut. Cas. Co.*, 964 P.2d 591, 593 (Colo. App. 1998); *see also Kelly*, 214 P.3d at 518 ("Because an employer is required to provide medical treatment, and an injured employee is required to submit to it, a trip for authorized treatment becomes an implied part of the employment contract."); *see also Excel Corp.*, 860 P.2d at 1394-95 (same).

¶ 21 Whether viewed in terms of causation or as an implied part of the employment contract, however, no court has ever expanded the doctrine in the manner claimant proposes, and we decline to do so. On the contrary, in 1983, the supreme court explained that "a

subsequent injury is compensable under the quasi-course of employment doctrine only if it is the 'direct and natural' consequence of an original injury *which itself was compensable*." *Savio*, 706 P.2d at 1265 (emphasis added). The language from *Savio* is consistent with the premise that a compensable injury must first exist before a claimant can access any workers' compensation benefits under the Act. *See* § 8-41-301(1) (establishing the conditions that must occur for a claimant to have the right to compensation under the Act). In our view, *Savio* plainly requires that the initial injury be compensable before a claimant can recover benefits for any injuries sustained in a secondary accident.

¶ 22 Subsequent cases have followed this general rule, applying the quasi-course of employment doctrine to find coverage for a secondary accident in the following situations:

- The claimant slipped and fell while leaving a reasonable and necessary medical appointment for an admitted work-related injury. *See Excel Corp.*, 860 P.2d at 1395.
- The claimant was traveling from a medical appointment for treatment of injuries he sustained years earlier in an

admitted work-related accident. Despite the passage of time, injuries caused by the second accident were part of the original claim, not a separate action. *See Price Mine Serv., Inc.*, 64 P.3d at 939.

- The claimant sustained injuries in an automobile accident when returning home from a vocational evaluation, related to an admitted work-related injury, that his employer required him to attend. *See Turner v. Indus. Claim Appeals Off.*, 111 P.3d 534, 538 (Colo. App. 2004); *see also* § 8-43-404(1).

¶ 23 Conversely, courts have denied coverage for subsequent-accident injuries as falling outside the scope of the quasi-court of employment doctrine in the following situations:

- The claimant was travelling to *unauthorized* treatment (treatment referred by a surgeon she selected, who was not an authorized physician) at the time of the subsequent accident. *See Schrieber v. Brown & Root, Inc.*, 888 P.2d 274, 278 (Colo. App. 1993).
- The claimant diverged from the direct route to see his authorized treating provider, instead following an alternate

> route that took him home first, which was a substantial deviation that removed the trip from the quasi-course of employment and rendered the ensuing injuries noncompensable. *See Kelly*, 214 P.3d at 519.

¶ 24 As these examples make clear, injuries sustained in a subsequent accident are compensable only when there first exists an initial *compensable* injury. Said in terms of causation, if there is no initial compensable injury, the secondary injury cannot be considered a direct and natural consequence of a compensable injury. And said in terms of the employment contract, an employee's travel to authorized treatment only becomes an implied part of the employment contract if the employee has suffered a compensable injury. Indeed, it would be anomalous for a claimant to be entitled to benefits for injuries sustained during a traffic accident while en route to an appointment with an employer-approved provider but not for the injuries the employee allegedly sustained at work.

¶ 25 Despite this precedent, claimant and amicus insist that the law in this area is unsettled and lends itself to the interpretation they advance. Amicus observes that although "there is no question

that there has been *dicta* in *Excel Corp.* and additional prior cases stating that the initial injury has to be compensable for the quasi-course of employment doctrine to apply . . . the question never turned on *whether* the initial injury was determined to be compensable." While it may be true that initial compensability was not at issue in these prior cases, we disagree that the law can be expanded in the manner claimant proposes.

¶ 26 In addition to the cases cited above, the principal treatise in this area, *Larson's Workers' Compensation Law*, defines the quasi-course of employment doctrine as

> activities undertaken by the employee *following upon his or her injury* which, although they take place outside the time and space limits of the employment, and would not be considered employment activities for usual purposes, are nevertheless related to the employment in the sense that they are necessary or reasonable activities that would not have been undertaken *but for the compensable injury*.

3 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 10.05 (2014) (emphases added). *Larson's* expressly contemplates that coverage will only exist for secondary injuries if the initial injury is compensable.

¶ 27 Claimant urges us to disregard the summation of existing law in *Larson's*, noting that although treatises may distill the rule to require an initial compensable injury before injuries sustained in a second accident can be compensated, "*[n]o Colorado court* has entered a finding consistent with the treatises . . . ." However, Colorado appellate courts have often looked to *Larson's* as a reliable source synthesizing existing workers' compensation law. Indeed, in *Savio*, the supreme court cited *Larson's* as its authority for the proposition that "a subsequent injury is compensable under the quasi-course of employment doctrine only if it is the 'direct and natural' consequence of an original injury which itself was compensable." *Savio*, 706 P.2d at 1265. Given the supreme court's apparent adoption of the rule articulated in *Larson's*, we cannot stray from it. *See Silver v. Colo. Cas. Ins. Co.*, 219 P.3d 324, 330 (Colo. App. 2009) (court of appeals "not at liberty to disregard" rule adopted by supreme court); *Bernal v. Lumbermens Mut. Cas. Co.*, 97 P.3d 197, 203 (Colo. App. 2003) (court of appeals is bound by decisions of the Colorado Supreme Court).

¶ 28 Further, as claimant concedes, no provision in the Act supports his position that an accident occurring secondarily to a

noncompensable injury should be covered. To the contrary, as noted, the Act unequivocally states that no compensation is available under its provisions unless a claimant establishes that his or her injury "is proximately caused by an injury . . . arising out of and in the course of the employee's employment . . . ." § 8-41-301(1)(c). Claimant has not met this statutory burden and therefore *no* benefits can flow to him under the Act.

¶ 29 Despite admitting that a provision covering secondary accidents in the absence of a compensable injury "does not currently exist," claimant argues that such a "provision *should* exist." That may be, but that is for the legislature, not this court, to tackle. *See Kraus v. Artcraft Sign Co.*, 710 P.2d 480, 482 (Colo. 1985). We are not at liberty to "read nonexistent provisions into the . . . Act." *Id.* We therefore decline to read into the Act a provision compensating claimants for secondary injuries even when the initial injury is not compensable.

¶ 30 To persuade us to stray from the rule against reading provisions into the Act, claimant outlines numerous rationales for changing the rule, including that

- he traveled to Dr. Sofish's office solely to comply with his workers' compensation obligations;
- he made no side trips and would not have traveled on that particular stretch of road where the accident occurred if not for his "contract with [e]mployer";
- when he traveled to Dr. Sofish's office his claim had not yet been denied, so he had no reason to believe the trip might not be compensable; and
- equity demands his injuries be covered.

All of these may be valid bases for statutorily expanding the quasi-course of employment doctrine. They may even warrant discussion before the legislature. But they are insufficient grounds for us to depart from the governing principle of the quasi-course of employment doctrine articulated by the supreme court in *Savio* and its offspring. We must decide cases based on existing legal authority. And in this regard, claimant's arguments are lacking. He offers us neither statutory cites nor precedential case law — nor even extrajudicial authority — in support of his position advocating for a change in the quasi-course of employment doctrine.

¶ 31 Nor are we persuaded that the principle of liberal construction of the Act mandates a different outcome. True, the supreme court has admonished that "[t]o effectuate its remedial and beneficent purposes, we must liberally construe the Act in favor of the injured employee." *City of Brighton v. Rodriguez*, 2014 CO 7, ¶ 13 (quoting *Specialty Rests. Corp. v. Nelson*, 231 P.3d 393, 398 (Colo. 2010)). But *Rodriguez* involved an employee who unquestionably suffered an injury at work. *Id.* at ¶ 2; *see also id.* at ¶¶ 30, 36 (rejecting argument that determining whether injury "arose out of" claimant's employment required identifying the precise mechanism of her fall down stairs at work). And liberal construction does not grant us authority to disregard the Act's plain language or read nonexistent provisions into the Act. *See Colo. Fuel & Iron Co. v. Indus. Comm'n*, 88 Colo. 573, 576, 298 P. 955, 956 (1931) ("The provision that the . . . Act shall be liberally construed cannot be extended to clothe the court with power to read into it a provision which does not exist."). We thus likewise reject the principle of liberal construction as a basis for expanding coverage under the quasi-course of employment doctrine.

¶ 32 Accordingly, we conclude that the Panel did not err in upholding the ALJ's determination that any injuries claimant sustained as a result of the January 16, 2020, motor vehicle accident were not compensable.

B. Equal Protection

¶ 33 Claimant next contends that the ALJ and the Panel violated his right to equal protection under the law by treating him differently than others involved in secondary accidents. He argues that, by denying him and others like him coverage, two similarly situated groups are treated inequitably: those who initially suffered compensable injuries versus those whose injuries were found to be noncompensable. We are not persuaded that claimant suffered a violation of his right to equal protection.

¶ 34 "Equal protection of the laws guarantees that persons who are similarly situated will receive like treatment by the law." *Harris v. Ark*, 810 P.2d 226, 229 (Colo. 1991). "To violate equal protection provisions, the classification must arbitrarily single out a group of persons for disparate treatment from that of other persons who are similarly situated." *Pepper v. Indus. Claim Appeals Off.*, 131 P.3d

1137, 1140 (Colo. App. 2005), *aff'd on other grounds sub nom. City of Florence v. Pepper*, 145 P.3d 654 (Colo. 2006).

¶ 35 "The threshold question in any equal protection challenge is whether the legislation results in dissimilar treatment of similarly situated individuals." *Duran v. Indus. Claim Appeals Off.*, 883 P.2d 477, 481 (Colo. 1994). "If they are not situated similarly, then the equal protection challenge must fail." *W. Metal Lath v. Acoustical & Constr. Supply, Inc.*, 851 P.2d 875, 880 (Colo. 1993).

¶ 36 We disagree with claimant's assertion that he is similarly situated to other workers who were "injured while following instructions from their employers." Claimant's argument ignores the differences between individuals whose injuries are covered by the quasi-course of employment doctrine. On the one hand are claimants who have sustained a compensable, work-related injury; on the other are those whose injuries were found to be causally unrelated to their work or who suffered no discernible injury at all. The former group's claims are covered by the Act, but the latter's are not. *See* § 8-41-301(1)(c). This is not an insignificant distinction. Consequently, the two identified groups are *not* similarly situated. *See W. Metal Lath*, 851 P.2d at 880.

¶ 37 We therefore conclude that claimant has not met his threshold burden of demonstrating that he was treated differently under the law than others similarly situated to him. *See Duran*, 883 P.2d at 481. His equal protection claim necessarily fails. *See W. Metal Lath*, 851 P.2d at 880.

III. Conclusion

¶ 38 The Panel's order is affirmed.

JUDGE FURMAN and JUDGE LIPINSKY concur.